

On pages 2-4 of the Office Action, the Examiner maintains the rejection of claims 1-10 under 35 U.S.C. § 103(a) as being unpatentable Schnell (U.S. Patent No. 527,815) in view of Thomas (U.S. Patent No. 2,457,613). However, the primary arguments, presented in the previous response, have not been addressed by the Examiner. Accordingly, so that Applicant can consider the advisability of an appeal, the Examiner is respectfully requested to address the following arguments.

I. The Schnell instrument is not capable of measuring an inclination with respect to a vertical direction.

Claim 1 is directed to an inclination measurement instrument for measuring an inclination with respect to a vertical direction.

In contrast, Schnell discloses a measuring instrument (spirit level) and attachments for the spirit level that permit it to be used for the purpose of laying gas, sewer, and other pipes at desired angles to the horizontal. Thus, the Schnell instrument is fundamentally different than the instrument of the present invention, and could not be used to measure an inclination with respect to a vertical direction. Further, Schnell does not provide a gauge for determining a level of the telescoping arm as required in claim 1.

II. There is no reason to provide a bubble gauge on the telescoping arm of Schnell.

The present invention, as defined in claim 1, requires a bubble gauge for determining a level of the telescoping arm. Claim 1 specifies that the bubble gauge is mounted at a position that corresponds to a reference line of graduations of the slide scale that is movable by telescoping a telescoping arm.

There is no reason to provide a bubble gauge on the telescoping arm of Schnell.

Providing a bubble gauge on the Schnell telescoping arm would not serve any significant purpose in the environment of Schnell, which is an instrument for measuring an inclination with respect to a horizontal direction.

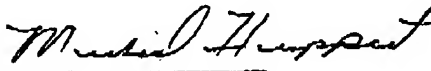
Thomas simply discloses bubble gauges (spirit levels 47-51) mounted on a combination bevel, i.e. not an inclination measuring instrument. Applicant concedes that a bubble gauge is known per se. However, there is no reason to provide the Thomas bubble gauge(s) on the telescoping arm of Schnell. The Examiner's states that providing the Thomas bubble gauge in the environment of Schnell would "provide additional inclination measurement accuracy during measurement of a surface." However, this would not be true in the proposed Schnell/Thomas device. The Examiner is requested to explain how a bubble gauge on the telescoping arm of Schnell would improve the accuracy of the inclination measurement. The proposed modification would not improve the accuracy of the measurement, nor would it provide any additional function. Furthermore, the Thomas reference clearly does not teach providing a bubble gauge in the specific position required in claim 1.

In view of the above, it is submitted that the present invention, as defined in claim 1, is clearly patentably distinguishes over the Schnell and Thomas references. Accordingly, the Examiner is requested to withdraw the rejection of claims 1-10 and pass this case to issue.

In the event that the Examiner has any comments or suggestions of a nature necessary to place this case in condition for allowance, then the Examiner is requested to contact Applicant's undersigned attorney by telephone to promptly resolve any remaining matters.

Respectfully submitted,

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